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Paper No.

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**JUL 15 2004**

In re Application of:	:	<b>OFFICE OF PETITIONS</b>
Bennett et al.	:	
Application No. 10/706,784	:	DECISION DISMISSING
Filed: November 12, 2003	:	PETITION UNDER
Title of Invention: COLLAPSIBLE	:	37 CFR 1.47(a)
FLEXIBLE PIPE AND METHOD OF	:	
MANUFACTURING SAME	:	

This is in response to the Petition Under 37 CFR 1.47(a), to allow the other inventor to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)"; should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor, AND BE ADDRESSED TO petitions Attorney Derek L. Woods. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on November 12, 2003, without, a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on December 19, 2003, requiring *inter alia*, a properly signed oath or declaration.

In response to the Notice, Applicant files the instant petition wherein Applicant avers that the nonsigning inventor, refuses to sign. Declaration by Inventor at p.1. In support of this assertion, a Statement of Facts in Support of Filing on Behalf of Non-signing Inventor (37 CFR 1.47) and Affidavit of Simon Ellis is filed wherein Mr. Ellis avers that he has made several attempts to reach the nonsigning inventor by telephone with no

success, and that the telephone number is no longer in service. Mr. Ellis further avers that the address of record with the nonsigning inventor's former employer is no longer valid, and that the nonsigning inventor has moved and left no forwarding address.

#### Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), if an inventor is unavailable (cannot be reached), while it is not required that the application be mailed<sup>1</sup>, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. (Emphasis supplied). See, MPEP § 409.03(d). At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

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<sup>1</sup>It is noted that Applicant asserts that the nonsigning inventor refuses to sign, while also asserting that the nonsigning inventor cannot be found or reached. Applicant is advised that 37 CFR 1.47(a) provides for two situations that allow inventors to proceed with the application on their own behalf and on behalf of a nonsigning inventor: one, as here, where an inventor cannot be found or reached after diligent effort, the other where an inventor refuses to join in an application after having been presented with the application. For future references, Applicant is advised that, where it is alleged that an inventor refuses to join in an application, before refusal can be alleged, the entire application must be sent to the nonsigning inventor. "A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers." See MPEP 409.03

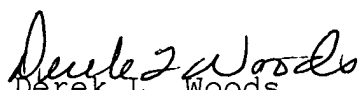
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 872-9306  
Attn: Office of Petitions

By hand: 2201 South Clark Place  
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Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions